

VZCZCXRO3002
PP RUEHBZ RUEH DU RUEHMR RUEHRN
DE RUEHLG #0696/01 3561325
ZNY CCCCC ZZH
P 221325Z DEC 09
FM AMEMBASSY LILONGWE
TO RUEHSD/SECSTATE WASHDC PRIORITY 0132
INFO RUCNSAD/SOUTHERN AF DEVELOPMENT COMMUNITY COLLECTIVE PRIORITY
RUEHLO/AMEMBASSY LONDON PRIORITY 0434
RUEAIIA/CIA WASHDC PRIORITY
RHMFISS/HQ USAFRICOM STUTTGART GE PRIORITY
RUEKDIA/DIA WASHDC PRIORITY
RUEHLMC/MILLENNIUM CHALLENGE CORPORATION WASHINGTON DC PRIORITY
RHEHNSC/NSC WASHDC PRIORITY
RUEATRS/DEPT OF TREASURY WASHDC PRIORITY 0558

C O N F I D E N T I A L SECTION 01 OF 02 LILONGWE 000696

SIPDIS
LONDON FOR AFRICA WATCHER PETER LORD

E.O. 12958: DECL: 12/21/2019
TAGS: [PGOV](#) [PREL](#) [KDEM](#) [MI](#)
SUBJECT: MALAWI: DEMOCRATIC NORMS UNDER PRESSURE

REF: A. 08 LILONGWE 366

[1](#)B. LILONGWE 626

[1](#)C. LILONGWE 658

[1](#)D. LILONGWE 650

[1](#)E. LILONGWE 507

[1](#)F. LILONGWE 635

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Classified By: Ambassador Peter W. Bodde for reasons 1.4(b) and (d).

SUMMARY

[1](#)1. (C) Six months into President Bingu wa Mutharika's second term, Malawi's continued development as a multi-party democracy is slowing. Once lauded as a leader dedicated to the development of Malawi's democracy, Mutharika's commitment to democratic norms is now coming into question. Malawi's parliament, dominated by the President's Democratic Progressive Party (DPP), offers no meaningful check on his legislative agenda. Constitutional amendments and changes to standing orders in the legislative body have passed with minimal debate. Criticism of the judiciary, as well as disregard for court decisions, is becoming more frequent. The recent legalization of warrantless searches has raised concerns about civil liberties. With the backing of a compliant Parliament, President Mutharika's moves show a disturbing trend line. End summary.

AWARDS FOR HIS SUPPORT OF DEMOCRACY

[1](#)2. (U) Four months after a resounding victory in elections that were widely praised as free and credible, President Bingu wa Mutharika traveled to Miami, Florida, in September 2009 to accept the Medal of Glory Award from the Foundation for Democracy in Africa (FDA) for his contributions to strengthening democratic institutions in Malawi. (NOTE: The FDA is a non-partisan organization dedicated to promoting participatory democracy on the continent. End note.) Accepting the award, President Mutharika stated, "It is encouraging that the FDA has recognized the improved political, economic and social development that Malawi has achieved under my leadership." Despite the hardball political tactics used in his first term, most observers had considered the President's democratic credentials strong, but he is now facing increased scrutiny.

AN ACCOMMODATING PARLIAMENT

13. (C) During his first term, the lack of a DPP majority in parliament stymied President Mutharika, and legislative gridlock was the order of the day (ref A). With the DPP's victory in the May 2009 elections, many hoped the government would move decisively to address Malawi's economic development and social challenges. Instead, the Parliament has generated concern that the body is subservient to the President's political agenda. First came the unprecedented move to amend its own standing orders to allow the entire membership, opposition and government members alike, to vote for the leader of the opposition (ref B). Parliament then dealt with the issue of long delayed local government elections by amending the Constitution to place the timing in the hands of the President (ref C). While both of these actions were technically legal under the Constitution, the manner of their passage is a concern.

IGNORING THE HIGH COURT

14. (C) In another move that caused much concern, the President disregarded a ruling by Malawi's High Court when he re-instituted a regional quota system for apportioning scarce seats in Malawi's universities. The court had ruled in 1993 that a similar quota system was illegal under Malawi's constitution. When the court issued an injunction on October 23 halting the implementation of the quota policy, the President shot back by saying, "Government will implement it whether some people like it or not ... come rain or shine." Later, when an opposition MP questioned the continued implementation of the policy in defiance of the court order, the Minister of Education said that the question was not in keeping with "the opinion outside."

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CONCERNS ABOUT CIVIL LIBERTIES

15. (C) Legislative action on police powers is also raising concerns among civil society regarding basic rights. In the most recent parliamentary session, government passed legislation legalizing warrantless searches. Police supervisors are now able to authorize searches of homes and businesses without the involvement of the courts, as long as the supervisor records why the search was made. While the Malawi Police Service has long been known to ignore the requirement for warrants to conduct searches, codifying this practice has generated a strong backlash from Malawian rights groups.

16. (C) The recent arrest of a critic of the President within the ruling DPP party caused further concern over the potential abuse of the law enforcement process for political ends. DPP Director for Political Affairs Harry Mkandawire publicly questioned President Mutharika's implementation of the "illegal" quota system and the passage of the local elections amendment, which resulted in his expulsion from the party. When Mkandawire continued to press his views, Police arrested him for "uttering seditious words." Mkandawire was released on bail and is currently awaiting trial.

HEIGHTENED RHETORIC

17. (C) In a December 14 speech, the President referred to a prominent Malawian journalist as a "diehard enemy." Following the November expulsions of foreign businessmen, President Mutharika labeled them "imperialists" and "neocolonialists" (ref E). Addressing a press conference in October, Mutharika described a proposed Economic Partnership Agreement (EPA) with the EU as a "divide and rule" tactic, designed to bring about the disintegration of African regionalism at the hands of "sinister" Europeans (ref F).

CIVIL SOCIETY AND THE PRESS QUESTION PRESIDENT'S MOVES

¶8. (C) Malawi's civil society groups and media are asking tough questions of the President, hammering away in public statements on the issues and the overall trend noted above. The Public Affairs Committee (PAC), a respected government watchdog group, cautioned politicians in a recent press statement saying, "Malawians should not be taken for granted.

Previous governments have failed to maintain their rule by under-estimating the importance of the rule of law and constitutionalism." In a December 21 press statement, the Mutharika administration countered, labeling PAC complaints as "mindless pluralism" and calling on the organization "to respect the mandate given ... in the May 19 elections."

WHERE IS ALL THIS HEADED?

¶9. (C) When taken together, these developments indicate a troubling trend line. Adding to the concern over the administration's trajectory is speculation, expressed to us by opposition MPs, that legislation will be tabled soon to extend the presidential term. The President has denied any desire to serve beyond his current term, but with no effective check on his power, and just over 15 years since "President for Life" Kamuzu Hastings Banda departed the political stage, Malawians' concerns regarding the future are real.

¶10. (C) Malawi is not yet at a tipping point, but we are monitoring this situation closely. Should there be a continued deterioration of democratic norms in Malawi, we will recommend that the Department instruct Post to formally engage with the GOM and officially note USG concern over the current trend line. Considering the political situation outlined above and the economic missteps the GOM has recently made (ref D), we see a rocky road ahead for Malawi's economic and social development as well as the maturation of its democratic process.

BODDE